

**REMARKS**

Claims 1 through 6 are currently pending in the application.

This amendment is in response to the Office Action of January 7, 2004.

**Claim Objections**

Claim 4 is objected to due to informalities in the claim language. Appropriate correction has been made.

**35 U.S.C. § 101 Double Patenting Rejection**

Claims 1 through 6 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 through 6 of prior U.S. Patent 6,607,946 (hereinafter referred to as the '946 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that a reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment of the invention, then statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicants assert that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiments of the inventions of presently amended independent claims 1 and 4 of the present application and the embodiments of the inventions of independent claims 1 and 4 of the '946 patent because different embodiments of the inventions are being claimed. For instance, presently amended independent claims 1 and 4 of the present application clearly set forth as elements of the presently claimed invention calling for "determining a desired thickness of the dielectric film, the dielectric film including silicon dioxide and silicon nitride therein when formed on the exposed surface of the layer containing silicon when the layer is maintained at a temperature in the range of at least 600° C to 1100° C in an oxidizing atmosphere", "introducing into the chamber a gaseous mixture including nitrous oxide exhibiting a partial pressure, ozone exhibiting a partial pressure, at least one compound containing a halogen selected from the group consisting of Cl<sub>2</sub>, Br<sub>2</sub>, HC1 and HBr, and steam, the partial pressure of the ozone being at least one tenth the partial pressure of the nitrous oxide in the gaseous mixture, the gaseous mixture being substantially free of fluorine-containing gases", "forming the dielectric film of the desired thickness by contacting the exposed surface of the layer containing silicon with the gaseous mixture including at least nitrous oxide, ozone, at least one compound containing a halogen selected from the group consisting of Cl<sub>2</sub>, Br<sub>2</sub>, HC1 and HBr, and steam", "determining the desired thickness of the field-effect transistor gate dielectric film, aid dielectric layer, the field-effect transistor gate dielectric layer containing silicon dioxide and silicon nitride when formed on the exposed surface of the layer of polycrystalline silicon when the layer is maintained at a temperature in the range of at least 600° C to 1100° C in an oxidizing atmosphere", and "forming the field-effect transistor gate dielectric to the desired thickness by subjecting the exposed surface of the layer of polycrystalline silicon to the gaseous mixture, the gaseous mixture including nitrous oxide at a partial pressure and ozone at a partial pressure, the partial pressure of the ozone being at least one tenth the partial pressure of the nitrous oxide" whereas corresponding independent claims 1 and 4 of the '946 patent does not. Accordingly, no statutory double patenting exists between the embodiments of the inventions of presently amended independent claims 1 and 4 of the present application and corresponding claims 1 and 4 of the

'946 patent. Therefore, presently amended independent claims 1 and 4 of the present application and dependent claims 2, 3, 5, and 6 are allowable.

Applicants submit that claims 1 through 6 are clearly allowable.

Applicants request the allowance of claims 1 through 6 and the case passed for issue.

Respectfully submitted,



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